

11-06-2002

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #73

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

GUY M. BIEDERMAN, JR.,

Opposer,

vs.

Opposition No: 91117179

NTC/CONTEMPORARY PUBLISHING  
GROUP, INC.,

Applicant.

Assistant Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

**APPLICANT'S MOTION TO SET ASIDE DEFAULT**

Applicant NTC/Contemporary Publishing Group, Inc., by its attorneys of record, pursuant to Fed. R. Civ. P. 60(b), hereby requests that the Board set aside the default judgement entered against it in the above-noted Opposition.

On September 19, 2002 the Board issued an order entering a default judgement against Applicant for **failure to file an answer**. This judgement against Applicant was entered by mistake. The facts are as follows:

1. Opposer filed its notice of opposition on February 2, 2000 .
2. On March 3, 2000 the Board instituted the proceeding and issued trial dates.
3. Applicant filed its answer on April 10, 2000 (shown in the Board's Prosecution History attached as Exhibit 1).
4. Opposer's counsel filed a motion to withdraw on January 29, 2001.
5. On March 9, 2001 the Board issued an order suspending the proceedings and allowing thirty days for Opposer's counsel to file a motion which complied with trademark rules.
6. Opposer's counsel filed another motion to withdraw on March 15, 2001.
7. Applicant filed its substitute power of attorney in favor of the undersigned on February 9, 2001.

8. On November 21, 2001 the Board issued an order suspending the proceedings and allowing Opposer thirty days to appoint new counsel.
9. On July 3, 2002, Attorney Mermelstein issued an order for **Opposer** to show cause why a default should not be entered against **Opposer**. (Exhibit 2)
10. On September 19, 2002, the Board issued a default judgement against **Applicant for failure to file an answer**, sustaining the opposition and refusing registration. (Exhibit 3)
11. On October 23, 2002, the United States Patent and Trademark Office issued a notice of abandonment for Applicant's Serial No. 75/701196 for **THUMBPRINT MYSTERIES**.

The order of default against Applicant was issued by mistake. Pursuant to Fed. R. Civ. P. 55, default judgement should be entered against the party that has failed to plead or otherwise defend. The record shows Applicant filed its answer. The record shows that the Board issued no order to show cause to Applicant. The Board's only order to show cause was issued on July 3, 2002, and was directed to Opposer, and Opposer did not respond. Therefore, the default should be properly entered against Opposer. For these reasons, Applicant respectfully requests that the Board correct the error and enter the default against Opposer. Relief should be appropriately granted to Applicant, namely, Serial No. 75/701196 for the mark **THUMBPRINT MYSTERIES** should be reinstated and passed to registration.

Respectfully submitted,



Ava K. Doppelt, Esquire  
Allen, Dyer, Doppelt, Milbrath & Gilchrist, P. A.  
255 South Orange Avenue  
Suite 1401  
Orlando, Florida 32801  
Voice: (407) 841-2330  
Fax: (407) 841-2343  
Email: [adoppelt@addmg.com](mailto:adoppelt@addmg.com)  
Attorneys for Applicant

CERTIFICATE OF MAILING

I certify that the foregoing documents are being deposited with the United States Postal Service, postage prepaid, in an envelope addressed to the Box TTAB NO FEE, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513, on November 6, 2002.

  
Ava K. Doppelt

-17A12

[REDACTED]

11-06-2002

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #73

```
Class(es):      16
```

18. \_\_\_\_\_

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513, on November 6, 2002.

NOV 18 AM 9:30

Dr